

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MARC S. KIRSCHNER, as the Trustee of the Refco  
Litigation Trust,

Plaintiff,

v.

CHRISTOPHER SUGRUE and JOHN DOES,  
individuals,

Defendants.

Civil Case No.  
07-645-SLR

Re: Docket No. 4

**RESPONSE TO ORDER TO SHOW CAUSE**

Marc S. Kirschner (the “Refco Trustee”), as Court-approved Trustee for the Refco Litigation Trust (the “Trust”),<sup>1</sup> by and through the undersigned counsel, files this Response to Order to Show Cause pursuant to the Court’s order of April 21, 2008.

**ARGUMENT**

Defendant Christopher Sugrue (“Sugrue”) is a United States resident who has fled abroad. Over the course of the preceding six months, the Refco Trustee has been actively investigating Sugrue’s location. Sugrue, however, has taken aggressive steps to conceal his location. The Refco Trustee is working to effectuate service on Sugrue pursuant to the Hague Convention and has retained APS International, Ltd. (“APS”), a company with expertise and experience in international service of process, to assist the Refco Trustee with international service on Sugrue once he has been located. Service

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<sup>1</sup> The Trust is the duly authorized representative to commence all claims and causes of action formerly owned by the bankruptcy estates of Refco Inc. and certain of its subsidiaries pursuant to the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of its Direct and Indirect Subsidiaries, as confirmed by the United States Bankruptcy Court for the Southern District of New York on December 15, 2006.

through the Hague Convention, however, is a lengthy process and APS expects that service will take approximately until August 2008.

Although service on a foreign defendant must comport with Federal Rule of Civil Procedure 4(f), which expressly states that Federal Rule of Civil Procedure 4(m) and the 120 day time limit set forth therein does not apply to service on foreign defendants, to the extent that Federal Rule of Civil Procedure 4(m) applies and requires the Refco Trustee to serve its complaint within 120 days of filing, good cause exists to extend the time for the Refco Trustee to serve Sugrue because any delay in prosecuting the above-captioned action arises from Sugrue's flight from the United States and/or from the lengthy service process created by the strictures of the Hague Convention. Accordingly, the above-captioned action should not be dismissed and the time to serve Sugrue should be extended such that the Refco Trustee may complete its investigation and effectuate service pursuant to the Hague Convention.

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**CONCLUSION**

**WHEREFORE**, the Refco Trustee requests that the Court not dismiss the above-captioned action for failure to prosecute and, pursuant to the motion filed contemporaneously herewith, extend the time for service of the Complaint.

Dated: May 14, 2008  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**



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Refco Litigation Trust**